

# Government of the District of Columbia

## ZONING COMMISSION



### ZONING COMMISSION ORDER NO. 545

Case No. 85-14

December 3, 1987

Luigi's Bridge - Use of Public Space

Pursuant to notice, a public hearing of the District of Columbia Zoning Commission was held on January 9, 1986. At that hearing session, the Zoning Commission considered an application from Giobatta C. Bruzzo, Luigi's, Inc., Debora C. Bruzzo Trust and Giobatta C. Bruzzo, Jr., Trust, ("Applicants") for review and approval of the use of air-space over a public alley, pursuant to the District of Columbia Public Space Utilization Act of October 17, 1968, as compiled at Section 7-941 et. Seq. D.C. Code (1973). The public hearing was conducted in accordance with provisions of Chapter 6 of the Rules of Practice and Procedure before the Zoning Commission. In Order No. 487, dated April 21, 1986, the Commission denied this application. Thereafter, applicants filed a petition in the District of Columbia Court of Appeals for review of the Commission's action. By order filed November 24, 1986, the Court remanded the case to the Commission for further proceedings. The Commission has now considered the application in light of the remand.

### FINDINGS OF FACT

1. The application, which was filed September 5, 1985, requested review and approval of the use of airspace above a public alley between lots 43 and 61 in Square 117.
2. The Zoning Commission's jurisdiction in the execution of airspace leases, pursuant to the District of Columbia Public Space Utilization Act of October 17, 1968, requires in part, that:

"The Zoning Commission of the District of Columbia, after public hearing and after securing the advice and recommendations of the National Capital Planning Commission, has determined the use to be permitted in such airspace and has established regulations applicable to the use of such airspace consistent with regulations applicable to the abutting privately owned property, including limitations and requirements respecting the height

of any structure to be erected in such airspace, offstreet parking and floor area ratios applicable to such structure, and easements of light, air, and access...."

3. Applicants propose to execute a lease for the use of airspace with the Government of the District of Columbia to construct an expansion to their existing restaurant. The addition will increase the dining facility and will be located fifteen feet above the public alley between lots 43 and 61. Lots 43 and 61 are located in a C-3-C zone district.
4. The C-3-C District permits matter-of-right major business and employment centers of medium/high density development, including office, retail, housing, and mixed uses to a maximum height of ninety feet, a maximum floor area ratio (FAR) of 6.5 for residential and other permitted uses, and a maximum lot occupancy of one-hundred percent.
5. The site is located between lots 43 and 61 in Square 117, on the west side of 19th Street between L and M Streets, N.W. The site consists of approximately 1,035 square feet of alley area.
6. The adjacent restaurant, on lot 43, occupies 1,760 square feet and has two floors for a total gross area of 3,520 square feet. The construction of the 1000 foot addition would bring the gross square footage to 4,520 square feet, with an FAR of 2.53.
7. The zoning pattern in the immediate area of the site is C-3-C to the north, west, and south; and C-4 to the immediate east, southeast, and northeast.
8. Across 19th Street from the site, from L to M Streets, are high-rise office buildings. Across 20th Street from the site is the Lafayette Plaza PUD. Three townhouses structures abut the alley.
9. The site is in a high density commercial area, according to the Land Use Element of the Comprehensive Plan.
10. Applicants propose to construct a one-story connector over public airspace to allow for additional dining for the adjoining Luigi's Restaurant. The addition will have a depth of sixty-four feet from the building line at 19th Street; be fifteen feet wide; be nineteen feet in height, beginning fifteen feet above the alley surface; and contain approximately 980 square feet of floor area.
11. Applicants contended that parking for the project would be "impossible," and there were no plans to incorporate parking spaces on the site. They further contended

that there were no parking and loading requirements because of credits associated with the existing uses, and the construction of the addition would not require on-site parking or loading.

12. The District of Columbia Office of Planning (OP), by memorandum dated December 30, 1985, and by testimony presented at the public hearing, recommended approval of the application, noting that the air rights and functional aspects of the alley are significant issues in this case. OP indicated that the proposed use of airspace project would provide additional restaurant space and employment opportunities, which are economic development objectives for the Central Employment Area.
13. OP recommended approval of the application, provided that the applicants address the following:
  - a. The alley shall be kept free from obstruction and open to vehicular and pedestrian traffic with appropriate signs, including during the construction period;
  - b. The addition would be one-story high and of brick construction to express continuity of the facade at 19th Street;
  - c. The passageway under the proposed restaurant addition should be designed as a positive element of the building complex, not as leftover space. The passageway should be constructed with a vaulted ceiling, springing from the horizontal members on either side and repeating the shape of the brick soldier course arch above the upper window on the front facade, raising the floor level inside by 15 inches, as compared to the drawings on file;
  - d. The passageway should be provided with appropriate lighting to protect the functional state of the alley. The windows currently proposed to be infilled with brick would be kept open and functional;
  - e. The wiring and utilities connections should be located somewhere other than the passageway walls;
  - f. The rear facade, which can be seen from 20th Street, should be designed with some recall of the overall character of the 19th Street; and,
  - g. The signage should not include flashing lights.

14. The District of Columbia Department of Public Works, by report dated December 23, 1985, indicated the following:

- a. The proposed air rights structure complies with the Air Rights Regulations of the District of Columbia relative to minimum height clearance;
- b. The alley in question has extensive interior loading operations which require trucks to use the east-west alley for access to an interior alley system. Access is also available from 20th Street into the alley interior, and it is expected that traffic disruption would be minimal during the construction phase.
- c. There are no alley lights within the alley segment which is being bridged. It may be necessary for applicants to provide additional lighting within the alley to enhance pedestrian and vehicular safety; and
- d. If the application is approved, the following conditions should be included in any airspace use lease agreement:
  - i. a paragraph containing a proviso that failure to make an annual payment of rent for the use of the public space shall be a basis for termination of the lease; and
  - ii. cancellation or termination of the required liability insurance policy will also terminate the lease agreement.

15. Advisory Neighborhood Commission (ANC) 2B did not submit a report in support of or opposition to this application.

16. The 1120 - 19th Street Limited Partnership, by submission dated February 20, 1986, included but was not limited to, the following issues in opposition:

- a. The alley, because of the one-way street configuration in the neighborhood, serves a major thoroughfare between 20th and 19th Streets, N.W., contrary to Z.C. Case No. 76-27, the only case heard regarding use of airspace;

- b. The alley provides interior loading access to nearly all buildings in the block bounded by L, M, 19th and 20th Streets, contrary to Case No. 76-27;
  - c. The applicants are submitting an unacceptable design of the "bridge";
  - d. The applicants have already expanded their business onto public space with a sidewalk cafe, so a second grant of public airspace should be conditioned upon compliance with applicable zoning regulations;
  - e. There is no rationale for the applicants to evade parking requirements enacted for the benefit of the public;
  - f. The subject proposal ignores handicapped accessibility under the D.C. Architectural Business Act, D.C. Code §6-1701 and §6-1703;
  - g. Increased potential exists for impairing firefighting apparatus to traverse the alley or ladder access to rise over the bridge structure. Neither is there any new emergency exit;
  - h. Increased public health risks could exist from additional garbage, rats, and noxious odors;
  - i. The addition of the tunnel from the bridge structure will not improve or enhance the streetscape.
17. The Commission has several specific areas of concern about the application: (1) the size of the existing sidewalk cafe; (2) the design of the facade and the arch; (3) trash collection; (4) loading; (5) parking; and (6) access for the handicapped.
18. After the District of Columbia Court of Appeals remanded this case to the Commission for further proceedings, the Commission undertook to identify these issues clearly, to the end that the applicants would be able to address them.
19. The Commission had expressed its concerns about handicapped access, parking, alley access, and loading in Commission Order No. 487. By letters dated February 17, 1987, and March 12, 1987, applicants' counsel was given opportunities to file further submissions.

20. In a submission dated March 23, 1987 (Exhibit 60), the applicants explicitly identified these issues as ones it was addressing in the submission. However, the Commission finds that applicants did not therein address the issues in any substantive, practical way. That is, applicants did not submit a viable plan to treat the areas of concern. Rather, applicants undertook to persuade the Commission that its concerns were not well founded.
21. After the Commission considered Exhibit No. 60, the Commission, through staff, wrote applicants' counsel, identified several areas of continuing concern, and stated that the Commission would be prepared to decide the case on the basis of the extant record. In reply, the applicants stated that they were prepared to reduce the size of the sidewalk cafe by 90 square feet, and to take other measures with respect to the sidewalk cafes, and would be willing to submit a revised design and to take reasonable steps to resolve any concerns that the Commission may have.
22. The Commission remains concerned about the application, because the applicants have not submitted an adequate, concrete proposal for resolution of its concerns.
23. Notwithstanding the foregoing, the Commission finds that the provisions of the Zoning Regulations which generally control use and development in a C-3-C District, together with regulations specifically applicable to the proposed use and structure, will reasonably accommodate those concerns.
24. The proposed action of the Zoning Commission to approve the application with regulations was referred to the National Capital Planning Commission (NCPC) under the terms of the District of Columbia Self-Government and Governmental Reorganization Act. NCPC, by report dated November 20, 1987, indicated that the proposed regulations would not adversely affect the federal establishment or the federal interests in the National Capital, nor be inconsistent with the Comprehensive Plan for the National Capital.

#### CONCLUSIONS OF LAW

1. The Zoning Commission for the District of Columbia must determine the use and zoning regulations applicable to the use of airspace, consistent with zoning applicable to abutting privately owned property, for individual applications as they are brought before this Commission. The standards for the Commission's approval are set forth in section 7-1034, D.C. Code, wherein it is provided that the Commission must establish such

regulations "consistent with regulations applicable to the abutting privately owned property, including limitations and requirements respecting the height of any structure to be erected in such airspace, off-street parking and floor area ratios applicable to such structure, and easements of light, air and access...."

2. The Commission concludes, that the phrase "structure to be erected in such airspace" includes the entirety of any structure of which a part is to be erected within airspace. The Commission has the authority to adopt regulations applicable to the airspace and the parcels assembled in conjunction therewith.
3. The proposed use of airspace pursuant to the regulations which generally apply to the C-3-C District, together with regulations which apply to the specific site, is reasonable.
4. Approval of the application would be consistent with the purposes of the Zoning Act (Act of June 20, 1938, 52 Stat. 797) by furthering the general public welfare and serving to stabilize and improve the area.
5. Approval of this application is not inconsistent with the Comprehensive Plan for the National Capital.
6. The proposed application can be approved with conditions which insure that development would not have an adverse affect on the surrounding community.
7. The approval of the application would promote orderly development in conformity with the entirety of the District of Columbia zone plan as embodied in the text and maps of the Zoning Regulations of the District of Columbia.

#### DECISION

In consideration of the Findings of Fact and Conclusions of Law herein, the Zoning Commission for the District of Columbia hereby orders approval of this application for use of public airspace above an alley between lots 43 and 61 in Square 117 on the west side of 19th Street, between L and M Streets, N.W., pursuant to the following regulations:


1. The airspace shall be developed and used in compliance with the use, height, bulk, density, loading, parking, and all other provisions of Title 11, DCMR, "Zoning", which apply to matter-of-right development and use of land in the C-3-C District.
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2. The structure in the airspace and the connected structures on lots 43 and 61 shall be deemed to constitute one building, and shall comply as such with the requirements of this order.
3. A maximum FAR of 1.0 may be used in the area of the alley.
4. All required parking, loading, and facilities for refuse compaction, storage, and pick-up, for the entire building, shall be located on lot 61 or lot 43.
5. The entire building shall provide for equal access by handicapped persons.
6. No portion of the airrights structure shall be permitted within the first fifteen feet above the surface of the public alley.
7. Applicant shall file an application for a building permit within six months of the final date of this order.
8. The Zoning Commission shall retain jurisdiction to review and approve the design of the structure, after the Zoning Administrator has ruled that the applicant has complied with condition number 1 through 6 of this order.

Vote of the Zoning Commission, taken at the public meeting on October 13, 1987; 4-0 (John G. Parsons, Maybelle T. Bennett, and Lindsley Williams to approve, and Patricia N. Mathews to approve by proxy; George M. White, not voting, not having heard the case).

This order was adopted by the Commission at a public meeting on December 3, 1987, by a vote of 3-1 (John G. Parsons, Maybelle T. Bennett, and Lindsley Williams to approve; Patricia N. Mathews to deny by proxy; and George M. White not voting, not having heard the case). In accordance with 11 DCMR 3028, this order is final and effective upon publication in the D.C. Register, that is, on 08 JAN 1988.

  
LINDSLEY WILLIAMS  
Chairman  
Zoning Commission

  
EDWARD L. CURRY  
Executive Director  
Zoning Secretariat